

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENITO JULIAN LUNA,

Petitioner,

No. CIV S-04-0627 FCD GGH P

vs.

SCOTT KERNAN,

Respondent.

ORDER

_____/

Petitioner is a state prisoner proceeding with appointed counsel with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On September 14, 2004, the undersigned granted petitioner's motion to voluntarily dismiss this case without prejudice.¹ On June 3, 2011, petitioner filed a first amended petition for writ of habeas corpus. Petitioner indicates that he returned to state court to exhaust additional claims, however it appears that those claims were exhausted when the California Supreme Court denied a petition on July 18, 2007. It is not clear what has transpired in the four years since the California Supreme Court denied the petition, or why petitioner waited to re-file in federal court.

¹ Respondent has never been served with this petition.

1 Petitioner shall show cause within twenty-one days why the petition should not be
2 dismissed for being filed beyond the one year statute of limitations.²

3 Accordingly, IT IS HEREBY ORDERED that petitioner shall show cause within
4 twenty-one days why the petition should not be dismissed for being filed beyond the one year
5 statute of limitations.

6 DATED: June 8, 2011

7 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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25 ²A dismissal without prejudice is treated for limitations purposes as if the case had never
26 been filed, Henry v. Lundgren, 164 F.3d 1240, 1241 (9th Cir. 1999), i.e., there is no filing to which
the later filed habeas petition can relate back.